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Supreme Court of the United States

OCTOBER TERM, 1930.

No. 563

GREAT NORTHERN RAILWAY COMPANY,

Petitioner,

vs.

DELMAR COMPANY,

Respondent.

STATEMENT OF RESPONDENT OPPOSING PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS, FOR THE EIGHTH CIRCUIT.

FRED W. PUTNAM,
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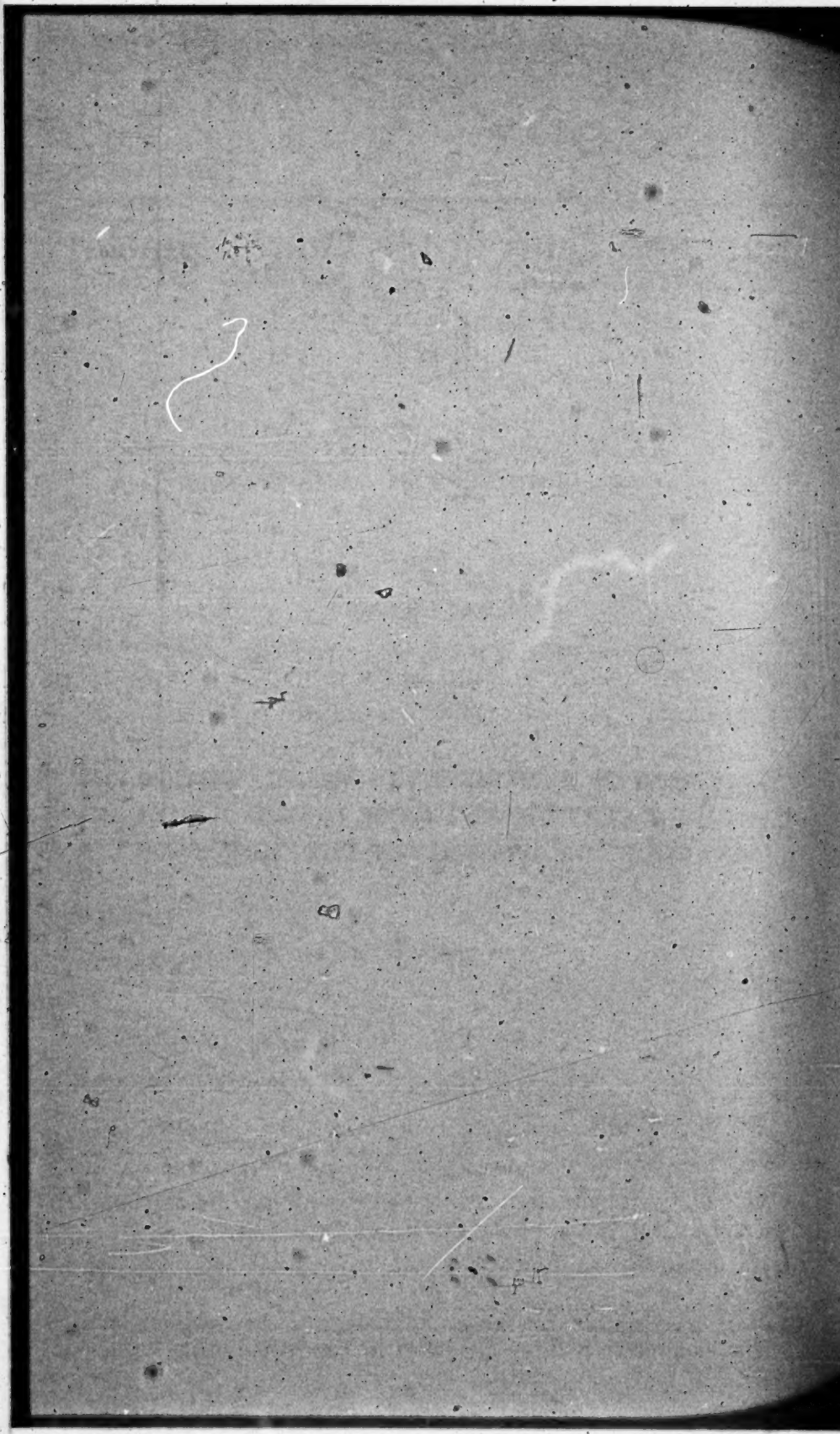

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Respondent, contending against the claim of Petitioner that this Court should issue its Writ of Certiorari as petitioned, respectfully shows as follows:

STATEMENT OF CASE.

The tariffs filed with the Interstate Commerce Commission, which are herein questioned, did not restrict the application of the rates therein published to any particular route. The shipments involved in this proceeding were shipped via Minneapolis to Superior, Wisconsin, while the shortest route was via Willmar, Minnesota.

The Commission in its decision in this proceeding, which

is reported in 120 I. C. C. 533 (R. 57), found as follows:

> "The route from points of origin herein through Minneapolis to Superior was an open route, and in the absence of restricted routing it must be found that the through rates to Duluth applied over the route traversed."

The Trial Court in its findings interpreted this statement of the Commission in 34 Federal (2d) 221, as follows:

> "In the case of *Delmar Co. vs. G. N. Ry. Co., supra,* they refer to the route over which the shipments in question moved as being an 'open route.' Apparently by this they meant that it was an unrestricted and available route and not unduly circuitous. That would seem necessarily to follow from the conclusion which they arrived at."

The United States Circuit Court of Appeals in its decision found in 43 Federal Reporter (2d) 780, page "782":

> "The Commission is supported by substantial evidence in its determination of the facts in this case" (R. 84-87).

It is the contention of the respondent that in the interpretation of these tariffs, there was the question before the Commission—by what route would the rates apply? And the Commission determined this question based upon the facts before it that there were no restrictions and that the route traversed was an "open route"—meaning that it was reasonable. There is nothing in these decisions which shows any arbitrary action on the part of the Interstate Commerce Commission or that they have exceeded the legitimate bounds of their authority.

The rule as to what matters should be reviewed by this

Court has been well established by its decisions. In *Seaboard Air Line Railway Company, et al., vs. United States, et al.*, 254 U. S. 57, 62, the Court says:

> "Moreover the determination of questions of fact is by law imposed upon the Commission, a body created by statute for the consideration of this and like matters. The findings of fact by the Commission upon such questions can be disturbed by judicial decree only in cases where their action is arbitrary or transcends the legitimate bounds of their authority."

We respectfully submit to the Court that the Appellant has not shown that the matter to be reviewed comes within any well defined principle established by this Court for the reviewing of orders of the Interstate Commerce Commission or Federal Court decisions. There is no such public interest or conflict of decisions of lower Courts or Commissions that necessitates a supervision of said Courts or Commissions, nor is there any claim by the petitioner that the action of the Interstate Commerce Commission was arbitrary or that they had exceeded the legitimate field of their activities. The interpretation of tariffs is ordinarily the duty of the Interstate Commerce Commission.

Respectfully submitted,

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